

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

REBECCA WHITEHURST; JENNIFER,
MILLINGTON BOTT; VICTORIA CARLSON;
NICOLE HAMEISTER; JANE DOE H1;
CASSIDEA AVERY; EMILY VINCENT; JANE
DOE H2; JANE H3 DOE; NEXT FRIEND OF
JOHN DOE;

Lead Case No.: 1:17-cv-00029
Member Case No.: 1:18-cv-01352

HON: Gordon J. Quist

Plaintiffs,

v.

USA GYMNASTICS, INC.; TWISTARS USA,
INC. d/b/a GEDDERT'S TWISTARS
GYMNASTICS CLUB USA; JOHN GEDDERT
(individually); and UNITED STATES OLYMPIC
COMMITTEE,

Defendants.

H. James White (P56946)
Alexander S. Rusek (P77581)
Brittany M. Nichol (P81900)
White Law PLLC
Attorneys for Plaintiffs
2549 Jolly Road, Suite 340
Okemos, Michigan 48864
Ph.: (517) 316-1195
Fax: (517) 316-1197
W: www.whitelawpllc.com
E: jameswhite@whitelawpllc.com
E: alexrusek@whitelawpllc.com
E: brittanynichol@whitelawpllc.com
E: discovery@whitelawpllc.com

Mark J. Zausmer (P31721)
Cameron R. Getto (P57300)
ZAUSMER, AUGUST & CALDWELL, P.C.
Attorneys for Defendants Twistars and
Geddert
32255 Northwestern Hwy., Suite 225
Farmington Hills, MI 48334
(248) 851-4111 Fax: (248) 851-0100
E: mzausmer@zacfirm.com
E: cgetto@zacfirm.com

**DEFENDANTS TWISTARS USA, INC. d/b/a GEDDERTS' TWISTARS
GYMNASTICS CLUB USA AND JOHN GEDDERT'S MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

NOW COME the Defendants, TWISTARS USA, INC. d/b/a GEDDERTS' TWISTARS GYMNASTICS CLUB USA ("Twistars") and JOHN GEDDERT ("Mr. Geddert"), by and through their attorneys, ZAUSMER, AUGUST & CALDWELL, P.C., and move for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for the reasons set forth in the attached Brief in Support.

Respectfully submitted,

/s/ Cameron R. Getto

Cameron R. Getto (P57300)

ZAUSMER, AUGUST & CALDWELL, P.C.

Attorneys for Defendants Twistars and Geddert

32255 Northwestern Hwy., Suite 225

Farmington Hills, MI 48334

(248) 851-4111 Fax: (248) 851-0100

cgetto@zacfirm.com

Dated: January 15, 2019

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I. INTRODUCTION

USA Gymnastics removed the present case from Ingham County Circuit Court, Case No. 18-608-NO, on December 5, 2018. Plaintiffs had filed their Complaint in state court on September 7, 2018. *See* Case No. 1:18-cv-01352, ECF No. 1-1. This present case is based on claims arising from the same case or controversy in *Whitehurst, et al. v. USA Gymnastics, et al.*, Member Case No. 1:18-cv-01059 (W.D. Mich.). As such, Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694]. For the reasons set forth below and in ECF No. 694, Twistars and Mr. Geddert seek immediate dismissal of Plaintiffs' claims under Federal Rule 12(b)(6).

II. FACTS,¹ LEGAL THEORIES & PROCEDURAL POSTURE

A. The parties.

1. Plaintiffs

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section II(A)(1) (Plaintiffs). Twistars and Mr. Geddert acknowledge and note that the present case includes three additional party-Plaintiffs, Jane H1 Doe, Cassidea Avery, and Emily Vincent, and that the subclass of Plaintiffs bringing claims against Twistars and Mr. Geddert in the present case only consists of Plaintiff John Doe. *See* Case No. 1:18-cv-01352, ECF No. 1-1 at 102 [PageID 107].

¹ The facts presented herein are provided for context only and are taken mostly from the pleadings. Some are taken from media accounts or websites. The relief requested in the present motion is based solely on the allegations made in the pleadings.

2. Defendants

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section II(A)(2) (Defendants). Twistars and Mr. Geddert note that only USA Gymnastics, the United States Olympic Committee (“USOC”), Twistars, and Mr. Geddert are named Defendants in the present case. *See* Case No. 1:18-cv-01352, ECF No. 1-1.

B. *Legal Theories*

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section II(B) (Legal Theories). Twistars and Mr. Geddert acknowledge and note that, in the present case, no legal theories are pled against the MSU Defendants, the “Twistars Plaintiffs” is only comprised of John Doe, and violations of Masha’s Law, 18 U.S.C. § 2255, are not pled against the USOC. *See* Case No. 1:18-cv-01352, ECF No. 1-1.

III. STANDARD OF REVIEW

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section III (STANDARD OF REVIEW)..

IV. LAW & ARGUMENT

A. The statute of limitations has run on all claims against Twistars and/or Mr. Geddert except those pled by John Doe.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December

10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(A) (The statute of limitations has run on all claims against Twistars and/or Mr. Geddert except those pled by John Doe.)

B. There is no cause of action based on Twistars' or Mr. Geddert's alleged failure to report.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(B) (There is no cause of action based on Twistars' or Mr. Geddert's alleged failure to report.)

C. There is no cause of action for "gross negligence."

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(C) (There is no cause of action for "gross negligence.")

D. The elements of intentional infliction of emotional distress are neither pled nor present here.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(D) (The elements of intentional infliction of emotional distress are neither pled nor present here.)

E. The elements of fraud and/or misrepresentation are not properly pled, nor are they present here.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(E) (The elements of fraud and/or misrepresentation are not properly pled, nor are they present here.).

F. Nassar was not an agent, and even if he had been, bedrock principles of law hold that sexual assaults are outside the scope of agency.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(F) (Nassar was not an agent, and even if he had been, bedrock principles of law hold that sexual assaults are outside the scope of agency.)

G. An analysis of the pleadings shows that the “Twistars’ Plaintiffs” claims should be dismissed because the statute of limitations is expired, there is no connection between Twistars and the particular Plaintiff, the claim is improperly pled, the elements of the claim are not present as a matter of law, or some combination of these bases warrants dismissal.

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section IV(G) (An analysis of the pleadings shows that the “Twistars’ Plaintiffs” claims should be dismissed because the statute of limitations is expired, there is no connection between Twistars and the particular Plaintiff, the claim is improperly pled, the elements of the claim are not present as a matter of law, or some combination of these bases warrants dismissal.)

V. CONCLUSION

Twistars and Mr. Geddert hereby incorporate by reference the entirety of their motion to dismiss filed in Member Case No. 1:18-cv-01059, Lead Case No. 1:17-cv-00029, on December 10, 2018 [ECF No. 694], inasmuch as it relates to this Section V (CONCLUSION).

Respectfully submitted,

/s/ Cameron R. Getto

Cameron R. Getto (P57300)

ZAUSMER, AUGUST & CALDWELL, P.C.

Attorneys for Defendants Twistars and Geddert

32255 Northwestern Hwy., Suite 225

Farmington Hills, MI 48334

(248) 851-4111 Fax: (248) 851-0100

cgetto@zacfirm.com

Dated: January 15, 2019

CERTIFICATE OF SERVICE

The foregoing document was filed electronically on the 15th day of January 2019 in accordance with the Court's ECF system. Notice of this filing will be sent to all parties by operation of the Court's ECF system.

/s/ Cameron R. Getto

CAMERON R. GETTO (P57300)

Attorney for Defendants Twistars and Geddert